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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18 JUNIPER NETWORKS, INC. and
19 APSTRA, INC.,

20 Plaintiffs,

21 v.

22 SWARM TECHNOLOGY LLC,

23 Defendant.

Case No. 5:20-cv-03137-JD

**SWARM TECHNOLOGY LLC'S MOTION
TO DISMISS AMENDED COMPLAINT FOR
LACK OF PERSONAL JURISDICTION AND
IMPROPER VENUE, AND MEMORANDUM
OF POINTS AND AUTHORITIES**

24 Date: May 20, 2021
Time: 10:00 a.m.
Location: Courtroom 11
25 Judge: Hon. James Donato
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1 PLEASE TAKE NOTICE THAT, on 20 May 2021, or as soon thereafter as the matter may
2 be heard in Courtroom 11 of the above-entitled court, located at 450 Golden Gate Avenue, San
3 Francisco, California, Defendant Swarm Technology, LLC (“Swarm”) will, and hereby does, move
4 under Federal Rules of Civil Procedure 12(b)(2) and (3) seeking the below specified relief.

5 RELIEF SOUGHT: Swarm seeks an order dismissing the Amended Complaint filed by
6 Juniper Networks, Inc. and Apstra, Inc. against Swarm Technology LLC on 2 April 2021;
7 alternatively, Swarm seeks an order transferring this matter to the Arizona District Court, where
8 personal jurisdiction and venue properly extend to all parties.

9 ISSUES TO BE DECIDED: This Court should dismiss the Amended Complaint for
10 Declaratory Judgment of Non-Infringement filed 2 April 2021, because the Court lacks personal
11 jurisdiction over Swarm, and because venue is improper in this District. Swarm respectfully
12 requests this Court to decide the following two issues:

13
14 **1. Swarm is an Arizona LLC with its only office in Mesa, Arizona. Plaintiffs Juniper and Apstra allege personal jurisdiction based on licensing letters Swarm sent to Juniper and Apstra in this District, and Swarm’s attendance at trade shows wholly unrelated to patent enforcement. However, personal jurisdiction in a declaratory judgment action for noninfringement exists only when a defendant has also engaged in “other activities” involving enforcement of the patent in the forum. Are the licensing letters and trade shows sufficient to support personal jurisdiction over Swarm in this District?**

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20 **2. In a declaratory judgment action for noninfringement, venue is proper in the forum in which the patent holder resides, and not in a forum into which the patent owner has sent licensing letters. Juniper and Apstra argue that venue is proper because a substantial part of events took place in this District and because Swarm is allegedly subject to personal jurisdiction in this District. Is venue proper in this Court when Swarm and its patents reside in Arizona, and where this Court lacks personal jurisdiction over Swarm?**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A. PROCEDURAL POSTURE

Juniper filed its initial Complaint with this Court on 7 May 2020, seeking a declaration of noninfringement.¹ On 7 July 2020, Swarm filed a Motion to Dismiss the Complaint (or transfer it to Arizona) for, *inter alia*, lack of personal jurisdiction and improper venue.² On 14 September 2020, this Court found the Motion to Dismiss (the “Motion”) suitable for decision without oral argument, and vacated the hearing on the Motion as well as the case management conference then scheduled for 17 September 2020.³

On 2 April 2021, prior to this Court ruling on the Motion, Juniper and Apstra filed an Amended Complaint again seeking a declaratory judgment of noninfringement, and naming Apstra, Inc. as an additional plaintiff.⁴ Swarm hereby moves to dismiss the Amended Complaint or, alternatively, to transfer this case to Arizona, based on essentially the same factual predicate and legal analyses set forth in Swarm’s original Motion.

B. SUMMARY OF ARGUMENT

In declaratory judgment actions for non-infringement, this Court has consistently and unambiguously held that conducting licensing discussions with a forum resident, even when those discussions involve sending cease and desist letters into the forum⁵ or actually *threatening* an infringement action against a forum resident,⁶ are insufficient to support

¹ Dkt. #1.

² Dkt. #18.

³ Dkt. #29.

⁴ Dkt. #38.

⁵ *Juniper Networks, Inc. v. SSL Services, LLC*, Case No: C 08-5758 SBA at Page 3 (N.D. Cal. Nov. 13, 2009) (“In *Avocent*, the Federal Circuit held that sending cease and desist letters to an alleged infringer within the forum, standing alone, is insufficient to establish personal jurisdiction); citing *Avocent Huntsville Corp.*, 552 F.3d 1324, 1333 (Fed. Cir. 2008).

⁶ *Adobe Sys. Inc. v. Tejas Research, Llc.*, No. C-14-0868 EMC (N.D. Cal. Sep. 17, 2014) at Page 3, Citing *Autonomy, Inc. v. Adiscov, LLC*, No. C11-0420 SBA, 2011 WL 2175551, at *3 (N.D. Cal. June 3, 2011) (“[T]he act of threatening a party with an infringement lawsuit is,

personal jurisdiction over the patent holder. Instead, due process requires the patent holder to have also engaged in “other activities”⁷ demonstrating patent enforcement. In the context of a declaratory judgment action for non-infringement, the plaintiff must establish that the patent holder either: i) initiated judicial or extra-judicial patent enforcement actions within the forum; or ii) otherwise imposed enforcement obligations upon a forum resident.⁸ Swarm has done neither; nor have Plaintiffs alleged such activities.

More particularly, the entirety of Swarm’s contacts in California comprise patent licensing discussions – and nothing more. Swarm’s licensing overtures to Juniper and Apstra included claim charts which map Swarm’s patent claims to Juniper’s and Apstra’s respective products. These claim charts underscore Swarm’s diligence and good faith efforts to avoid litigation in favor of a licensing arrangement. Swarm never sent a cease and desist letter,⁹ never issued an oral or written demand,¹⁰ never commenced an enforcement action (judicial or otherwise),¹¹ and never engaged in any predicate activity whatsoever of the type required by this Court to confer personal jurisdiction.

standing alone, insufficient to establish personal jurisdiction.”).

⁷ *Juniper Networks v. SSL Services* at 3 citing *Avocent* at 1333 (“Rather, the court observed that the Federal Circuit has ‘consistently required the defendant to have engaged in ‘other activities’ that relate to the enforcement or the defense of the validity of the relevant patents.”).

⁸ *Adobe v. Tejas* at 3, citing *Avocent* at 1334 (“In *Avocent*, the court noted that these ‘other activities’ include ‘initiating judicial or extra-judicial patent enforcement within the forum.’”); See also *Juniper Networks v. SSL Services* at 3 citing *Avocent* at 1334 (“Examples of these ‘other activities’ include initiating judicial or extra-judicial patent enforcement *within the forum*, or entering into an exclusive license agreement or other undertaking which imposes enforcement obligations with a party residing or regularly doing business *in the forum*.”) (Emphasis in original).

⁹ Declaration of John A. Fisher ¶ 6, attached as Exhibit “A”; Declaration of Alfonso Iniguez ¶ 13, attached as Exhibit B.

¹⁰ Fisher Decl. ¶ 5; Iniguez Decl. ¶ 12.

¹¹ Fisher Decl. ¶ 5; at Iniguez Decl. ¶ 12.

1 Indeed, Plaintiffs cannot credibly argue that Swarm’s licensing offers to California
2 residents somehow constitute the type of “other activities” which this Court has recognized
3 as supporting personal jurisdiction. Swarm’s licensing activities simply do not. As detailed
4 below, regardless of the *extent* to which Swarm may have sought licensees in California,
5 those efforts are insufficient to confer personal jurisdiction unless Swarm *also engaged in*
6 *“other activities.”* Because Swarm did not engage in “other activities,” Plaintiffs have not
7 established and cannot establish a *prima facie* case of personal jurisdiction over Swarm. No
8 amount of jurisdictional discovery can change this conclusion.
9

10
11 For the foregoing reasons and as discussed more fully below, this Court lacks
12 personal jurisdiction over Swarm, and Plaintiff’s Amended Complaint for Declaratory
13 Judgment of Non-Infringement should therefore be dismissed. In the alternative, Swarm
14 requests this Court to exercise its plenary authority to transfer this matter to the District of
15 Arizona, where Swarm resides and personal jurisdiction extends to all parties.
16

17 **II. FACTUAL BACKGROUND**

18 **A. SWARM PIONEERED A NEW COMPUTER ARCHITECTURE**

19 Alfonso Iñiguez (“Iñiguez”) is the founder of Swarm Technology LLC, an Arizona
20 limited liability corporation based in Mesa, Arizona. Iñiguez holds a Master of Science in
21 electrical engineering and has 30 years’ experience working with computer chips. When
22 Iñiguez first began working with computers, the typical architecture (the protocols that
23 describe the operation of a computer system) involved a central processing unit (CPU)
24 configured to directly control one or more secondary processors.
25

26 Iñiguez realized that existing architectures overburdened the CPU and frequently left
27 co-processors idle. Iñiguez envisioned a revolutionary new architecture having a central
28 controller configured to populate a task pool with a plurality of discrete tasks to be

performed by the co-processors (or “agents”). In this new paradigm, the central controller need not communicate directly with the co-processors, and the co-processors need not wait for instructions from the central controller (the co-processors operate autonomously). This dramatically increases the speed, scalability, and processing capacity of the system.¹²

Iñiguez formed Swarm on 17 January 2014 to develop and commercialize his new architecture.

B. SWARM HAS BEEN AWARDED THREE U.S. PATENTS

Iñiguez applied for patents in the United States, the European Union, Japan, India, China, Hong Kong and under the Patent Cooperation Treaty. In addition to patents issued by patent authorities in other countries, the United States Patent and Trademark Office issued the following three patents: United States Patent No. 9,146,777 (the “777 Patent”); United States Patent No. 9,852,004 (the “004 Patent”); and United States Patent No. 10,592,275 (the “275 Patent”), (collectively, “the Patents” or “the Patents-in-Suit”). The Patents cover many applications to computers, networks, cloud computing, and internet of things devices.¹³

C. SWARM OFFERS TO LICENSE ITS PATENTS

After Iñiguez assigned the Patents to Swarm¹⁴, Swarm endeavored to license the Patents while it continued to develop its multi-processor technology and related applications. To assist with these licensing efforts, Swarm enlisted John Fisher, a patent agent and licensing specialist, with extensive industry experience. Fisher contacted potential licensing prospects, including Juniper and Apstra.

¹² A simple diagram of Swarm’s invention is found at <https://vimeo.com/150450660> and <https://vimeo.com/150743111>.

¹³ Examples of these applications can be found: <https://vimeo.com/150759740>; <https://vimeo.com/150744874>; <https://vimeo.com/244579285>; and <https://vimeo.com/177881911>.

¹⁴ Iñiguez, the inventor, assigned the Patents to Swarm, as follows: the ‘777 Patent was filed on 25 Jan 2013, assigned to Swarm on 08 Jul 2015, and issued 29 Sep 2015; the ‘004 Patent was filed on 24 Jul 2014, assigned to Swarm on 10 Mar 2017, and issued 26 Dec 2017; and, the ‘275 Patent was filed on 22 Dec 2017, assigned to Swarm on 22 Dec 2017, and issued 17 Mar 2020.

Between 16 July 2018, and 4 May 2020, Fisher corresponded with various representatives at Juniper, Apstra, and other companies both within and outside this District promoting license opportunities. For example, on 5 July 2019, Fisher wrote a letter to Rami Rahim (Juniper's CEO) and Brian Martin (Juniper's general counsel),¹⁵ stating:

The purpose of this letter is to highlight a licensing opportunity relating to zero-touch provisioning; ***this letter is not and should not be construed as an accusation of infringement.***

(Emphasis added.)

Fisher also said that "Swarm is now seeking to license its patents to a number of hardware and software providers" and "would welcome an opportunity to meet with you to discuss terms of a non-exclusive license." In an attempt to persuade Juniper to take a license, Fisher also included a copy of the '004 Patent and a claim chart that demonstrated why Juniper should take a license. At no time did Fisher threaten to sue Juniper.

In an email dated 13 September 2019,¹⁶ Fisher added:

I have also attached a draft licensing agreement for your consideration. In the draft, Section 1.3 LICENSED PRODUCTS is left blank. I leave it to you to fill in the blank with a definition that is appropriate for Juniper products. Section 3 provides a broad license under Swarm Patents. Section 4, the payment section, also contains blanks that are to be the subject of negotiation. Although Swarm proposes a running royalty (in the range of 1%), as I have noted in the past, a much more favorable settlement is available to early licensees. Swarm is open to alternate settlements such as a lump sum payment or fixed payments over time.

In an email dated 6 November 2019, Fisher persisted:¹⁷

I was surprised and disappointed by your email of October 24 saying Juniper is not interested in taking a license at this time. In the interest of continuing the good faith discussions both parties have been pursuing, I would like to make a few observations.

¹⁵ Dkt. #18-4 at Fisher Decl., Exhibit 1.

¹⁶ Dkt. #18-4 at Fisher Decl., Exhibit 5.

¹⁷ Dkt. #18-4 at Fisher Decl., Exhibit 7.

From the very beginning *Swarm has couched its correspondence as a "licensing opportunity."* Swarm is in communication with several other companies -your competitors. As I have stated repeatedly, *the first licensee will enjoy much more favorable licensing terms.* The first licensee will therefore be at a competitive advantage with respect to other players in the parallel processing field.

(Emphasis added.)

On 6 April 2020 and after the '275 Patent issued, Fisher wrote:

When we spoke in December as a follow up to back and forth emails of October and November you said Juniper was not interested in taking a license under the Swarm patents.

A new patent, 10,592,275, has recently been issued to Swarm.

As I have said from the beginning, Swarm is willing to offer a license under all of its patents on terms that will be fair to all licensees; the most favorable terms will be available to an early licensee. I look forward to discussing such a licensing opportunity with you.

In a letter to Apstra dated 16 April 2020, Fisher notes that he had written "on three previous occasions to bring to [Apstra's] attention the relationship between [AOS] and technology developed and patented by Swarm," including Swarm's '004 Patent and '275 Patent.¹⁸ The 16 April 2020 letter included a claim chart mapping claim 11 of the '275 Patent to Apstra's AOS.¹⁹

D. SWARM ATTENDED THREE – AND ONLY THREE - TRADE SHOWS IN CALIFORNIA

During 2017 and 2018, Mr. Iñiguez attended a total of three (3) trade shows in California (specifically in May 2017, November 2017, and May 2018) to promote his technology and to seek potential licensees.²⁰ Other than these three trade shows, neither Mr. Iñiguez, nor any other Swarm representative, has entered the State of California on behalf

¹⁸ Dkt. #38, ¶ 37.

¹⁹ Dkt. #38, ¶ 38.

²⁰ Iniguez Decl. ¶4.

of Swarm at any time or for any purpose whatsoever.²¹ Neither Mr. Iñiguez, nor anyone else representing Swarm, had any contact with Juniper or Apstra during the trade shows.²² Despite Plaintiffs' suggestion to the contrary, no licensing activity took place during the trade shows.²³ In particular, although Swarm displayed a sign at its booth announcing that licenses were available, no licensing discussions ever took place with Juniper, Apstra, or anyone else, no draft license agreements were exchanged (none were available), and no licensing terms were proposed to or discussed with anyone.²⁴ Simply stated, while Mr. Iñiguez had hoped to generate some interest among potential licensees at the trade shows, his efforts were unsuccessful.²⁵

E. JUNIPER FILES SUIT AGAINST SWARM

Significantly, not a single communication from Swarm to Juniper, Apstra, or anyone else – whether written or oral – included any demand or deadline, and Swarm never threatened any type of judicial or extra-judicial enforcement action against anyone at any time whatsoever.²⁶ Nor has Swarm entered into a single license agreement – whether exclusive or non-exclusive – with anyone within or outside of California.²⁷

On 7 May 2020, after abruptly terminating licensing discussions²⁸ and without any notice to Swarm, Juniper filed its Complaint for Declaratory Judgment of Non-Infringement.²⁹

On 7 July 2020, Swarm moved to dismiss the original complaint (or transfer it to

²¹ Iniguez Decl. ¶ 5; Fisher Decl. ¶ 1.

²² Iniguez Decl. ¶ 6.

²³ Iniguez Decl. ¶ 7.

²⁴ Iniguez Decl. ¶ 7.

²⁵ Iniguez Decl. ¶ 8.

²⁶ Iniguez Decl. ¶ 12; Fisher Decl. ¶ 5.

²⁷ Iniguez Decl. ¶ 15; Fisher Decl. ¶ 8.

²⁸ Iniguez Decl. ¶ 9; Fisher Decl. ¶ 2.

²⁹ Dkt #1.

1 Arizona) based on lack of personal jurisdiction and improper venue.³⁰ On 14 September
 2 2020, this Court found the Motion to Dismiss (the “Motion”) suitable for decision without
 3 oral argument, and vacated the hearing on the Motion as well as the case management
 4 conference then scheduled for 17 September 2020.³¹

5 On 2 April 2021, Juniper and Apstra filed an Amended Complaint, again seeking a
 6 declaration of noninfringement and naming Apstra. as an additional plaintiff.³² For the
 7 same reasons set forth in Swarm’s Motion to Dismiss Juniper’s original Complaint and as
 8 further discussed herein, Swarm hereby moves this Court to dismiss the Amended
 9 Complaint (or, in the alternative, transfer it to Arizona).

10 **III. ARGUMENT**

11 **A. PERSONAL JURISDICTION REQUIRES ENFORCEMENT** 12 **ACTION**

13 In a suit seeking a declaration of non-infringement, Federal Circuit law is applied to
 14 determine whether a district court has personal jurisdiction over a non-resident patent
 15 owner.³³ As the party seeking to invoke the court's jurisdiction, the burden of demonstrating
 16 personal jurisdiction is on the plaintiff.³⁴ Swarm is an Arizona LLC and operates out of a
 17 single facility in Mesa, Arizona. Swarm is therefore not subject to general jurisdiction in
 18 the Northern District of California; there is no dispute on this issue.

19 In a declaratory judgment action for noninfringement, “[t]he relevant inquiry for
 20 specific personal jurisdiction purposes then becomes to what extent has the defendant
 21 patentee ‘purposefully directed [such enforcement activities] at residents of the forum,’ and
 22 the extent to which the declaratory judgment claim ‘arises out of or relates to those

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 24 ³⁰ Dkt. #18.

25 ³¹ Dkt. #29.

26 ³² Dkt. #38.

27 ³³ *Juniper Networks, Inc. v. SSL Services, LLC*, Case No: C 08-5758 SBA (N.D. Cal. Nov. 13, 2009), citing *Avocent Huntsville Corp. v. Aten Int'l Co.*, 552 F.3d 1324, 1328 (Fed. Cir. 2008).

28 ³⁴ *See Pieczenik v. Dyax Corp.*, 265 F.3d 1329, 1333 (Fed. Cir. 2001).

activities.”³⁵ Merely sending a “cease-and-desist” letter or “infringement” letter is not enough to establish personal jurisdiction.³⁶

In determining whether specific jurisdiction exists, California courts apply the three-part analysis articulated in *Adobe Sys. Inc. v. Tejas Research*:³⁷ (1) Whether the defendant purposefully directed activities at the forum's residents (by purposefully availing itself of the forum)³⁸; (2) whether the claim arises out of (or relates to) those activities; and (3) whether assertion of personal jurisdiction is "reasonable and fair."³⁹

When applying the reasonableness factor in a declaratory judgment action for non-infringement, "not all of a patentee's activities in the forum state" ⁴⁰ are relevant to personal jurisdiction. Rather, a declaratory judgment claim "arises out of or relates to the activities of the defendant patentee in enforcing the patent or patents in suit."⁴¹ Consequently, "only those activities of the patentee that relate to the enforcement or defense of the patent can give rise to specific personal jurisdiction for such an action."⁴² The Court must therefore "examine the jurisdictional facts for conduct whereby the patentee 'may be said to purposefully avail itself of the forum and to engage in activity that relates to the validity and enforceability of the patent.'"⁴³

In *Juniper Networks* (citing *Avocent*), the Federal Circuit held that cease and desist letters sent to an alleged infringer within the forum, standing alone, are insufficient to

³⁵ *Avocent* at 1332.

³⁶ *Id.* At 1333.

³⁷ *Adobe Sys. Inc. v. Tejas Research, LLC*, No. C-14-0868 EMC (N.D. Cal. Sep. 17, 2014).

³⁸ *Id.*, citing *Autogenomics, Inc. v. Oxford Gene Tech. Ltd.*, 566 F.3d 1012, 1020 (Fed. Cir. 2009)).

³⁹ *Id.*, citing *AFTG-TG, LLC v. Nuvoton Tech. Corp.*, 689 F.3d 1358, 1361 (Fed. Cir. 2012).

⁴⁰ *Id.*, citing *Radio Sys. Corp. v. Accession, Inc.*, 638 F.3d 785, 789 (Fed. Cir. 2011).

⁴¹ *Id.*, (quoting *Avocent Huntsville Corp. v. Aten Int'l Co., Ltd.*, 552 F.3d 1324, 1332 (Fed. Cir. 2008)).

⁴² *Id.*, quoting *Square, Inc. v. Morales*, No. C13-01431 SBA, 2013 WL 6199281, at *4 (N.D. Cal. Nov. 27, 2013) (citing *Avocent*, 552 F.3d 1324, 1332).

⁴³ *Id.*, citing *Autogenomics*, 566 F.3d at 1020.

1 establish personal jurisdiction.⁴⁴ The Federal Circuit has also held that a patent holder who
 2 merely threatens a forum resident with an infringement action is not subject to personal
 3 jurisdiction.⁴⁵ Instead, the Federal Circuit has "consistently required the defendant to
 4 have engaged in 'other activities' that relate to the enforcement or the defense of the
 5 validity of the relevant patents."⁴⁶ Such "other activities" include initiating judicial or
 6 extra-judicial patent enforcement within the forum, or entering into an exclusive license
 7 agreement or other undertaking which imposes enforcement obligations with a party
 8 residing or regularly doing business in the forum.⁴⁷ "Extra-judicial" enforcement occurs
 9 when a patentee affirmatively impedes the free movement of allegedly infringing goods
 10 through commerce, for example by seeking to remove them from a trade show.⁴⁸

11 Even where a patent owner enters into multiple license agreements with forum
 12 residents, personal jurisdiction is still lacking unless the agreements also give the patent
 13 owner control over the licensee's sales activities.⁴⁹ That is, even substantial licensing
 14 activities resulting in multiple license agreements with forum residents are insufficient to
 15 confer personal jurisdiction unless the agreements create exclusive relationships between
 16 the patentee and residents of the forum.⁵⁰

17
 18 ⁴⁴ *Juniper Networks* at 3, citing *Avocent* at 552 F.3d at 1333.

19 ⁴⁵ *Id.*, citing *Autonomy, Inc. v. Adiscov, LLC*, No. C11-0420 SBA, 2011 WL 2175551, at *3
 20 (N.D. Cal. June 3, 2011) ("[T]he act of threatening a party with an infringement lawsuit is,
 standing alone, insufficient to establish personal jurisdiction.").

21 ⁴⁶ *Id.*, citing *Avocent* at 1334.

22 ⁴⁷ *Id.*

23 ⁴⁸ *Campbell Pet Co. v. Miale*, 542 F.3d 879, 886 (Fed. Cir. 2008) ("[The patent owner] attempted
 to have Campbell's allegedly infringing products removed from the convention").

24 ⁴⁹ See, e.g., *Breckenridge Pharm., Inc. v. Metabolite Labs., Inc.*, 444 F.3d 1356, 1366 (Fed. Cir.
 2006) (noting no personal jurisdiction where the "defendant has successfully licensed the patent
 in the forum state, even to multiple non-exclusive licensees, but does not, for example, exercise
 control over the licensee's sales activities and, instead, has no dealings with those licensees
 beyond the receipt of royalty income").

26 ⁵⁰ See *Autogenomics, Inc. v. Oxford Gene Tech., Ltd.*, No. SACV 07-846-MRP (ANx), 2008 WL
 7071464 (C.D. Cal. Jan. 17, 2008), aff'd 566 F.3d 1012 (Fed. Cir. 2009) ("Extensive authority
 27 supports the proposition that other licensing activities with in-state entities, even if substantial, are
 generally insufficient for specific jurisdiction unless they create exclusive relationships between
 28 the patentee and residents of the forum.").

1 **B. SWARM’S ACTIONS DO NOT SUPPORT PERSONAL**
2 **JURISDICTION**

3 This Court has consistently refused to exert personal jurisdiction over a patentee –
4 regardless of the extent of his licensing efforts - who has not also either: i) initiated a judicial
5 or extra-judicial enforcement action; ii) entered into an exclusive license agreement; or iii)
6 otherwise imposed enforcement obligations upon a party residing in or regularly doing
7 business in the forum. In the present case, the entirety of Swarm’s contacts with Juniper
8 consist of a dozen letters and emails surrounding licensing discussions. To the extent Swarm
9 attended trade shows in California, Swarm had no contact with Juniper and no licensing
10 discussions or enforcement activities took place.

11 Swarm has never signed a license agreement, sent a cease and desist letter, issued an
12 oral or written demand, or commenced any enforcement action of any kind with anyone,
13 inside or outside California. Because Swarm has not performed a single predicate act of the
14 type required to support personal jurisdiction, this Court may not properly exercise personal
15 jurisdiction over Swarm.

16 Notably, Juniper has not even alleged facts which purport to establish a *prima facie*
17 case of personal jurisdiction. Rather, Juniper simply declares that Swarm’s licensing efforts
18 constitute “enforcement activities” which somehow satisfy the “other activities”
19 requirement. Juniper essentially argues that the extent of Swarm’s licensing efforts renders
20 them sufficient to support personal jurisdiction. However, as explained above, mere
21 licensing activity – regardless of its extent - cannot satisfy the due process requirement for
22 personal jurisdiction absent “other activities” which are not present here.

23 Because this Court lacks personal jurisdiction over Swarm, the Amended Complaint
24 should be dismissed or transferred to Arizona.⁵¹

25
26
27 ⁵¹ 28 U.S.C. § 1631 authorizes this Court to transfer the case to the District of Arizona; *APL Co.*
28 *Pte v. Interagro Inc*, No. 14-CV-00488-JD, 2014 WL 4744410, at *4 (N.D. Cal. Sept. 22, 2014)
 (Donato, J.) (transferring case under 28 U.S.C. § 1631 when the court lacked personal jurisdiction
 over the defendant).

1 **C. VENUE IS IMPROPER IN THIS DISTRICT**

2 This Court need not address venue specifically, since it lacks personal jurisdiction
3 over Swarm in any event. However, even if venue is proper in the Northern District, venue
4 is more appropriate in Arizona where Swarm resides and is subject to personal jurisdiction.

5 Moreover, “[o]nce the defendant has challenged the propriety of venue in a given
6 court, the plaintiff bears the burden of showing that venue is proper.”⁵² In evaluating a Rule
7 12(b)(3) motion to dismiss for improper venue, the pleadings need not be accepted as true,
8 and the Court may consider facts outside the pleadings.⁵³

9 Venue is proper in:

10 (1) a judicial district in which any defendant resides, if all
11 defendants are residents of the State in which the district is
 located;

12 (2) a judicial district in which a substantial part of the events or
13 omissions giving rise to the claim occurred, or a substantial part
 of property that is the subject of the action is situated; or

14 (3) if there is no district in which an action may otherwise be
15 brought as provided in this section, any judicial district in which
 any defendant is subject to the court's personal jurisdiction with
16 respect to such action.⁵⁴

17 If venue is improper, then the court “shall dismiss, or if it be in the interest of justice, transfer
18 such case to any district or division in which it could have been brought.”⁵⁵

19 Plaintiffs do not contend that venue is proper under subsection 1. Nor could they
20 because Swarm resides only in Arizona. Instead, Plaintiffs argue that venue is proper
21 because “substantial parts of the events” occurred in the Northern District of California and
22 because Swarm is subject to the Court’s personal jurisdiction. Plaintiffs are mistaken in
23 this regard.

24 ⁵² *E.g., Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979)
25 (reversing denial of motion for summary judgment of improper venue).

26 ⁵³ *PHH Mortg. Corp. v. Barrett, Daffin, Frappier, Treder & Weiss, LLP*, No. 15-CV-04711-JD,
27 2016 WL 1588270, at *2 (N.D. Cal. Apr. 20, 2016) (Donato, J.) (finding improper venue and
transferring the case).

28 ⁵⁴ 28 U.S.C. § 1391(b).

⁵⁵ 28 U.S.C. § 1406(a).

1 In a declaratory judgment action for noninfringement, the “substantial part of events
2 giving rise to the claim” is not the “offer to negotiate a non-exclusive license Rather,
3 ‘the source of the cause of action for noninfringement is the ownership and existence of the
4 copyright or patent.’”⁵⁶ Thus, the substantial part of events is where Swarm is located.⁵⁷

5 Swarm is an Arizona based limited liability company with its place of business in
6 Mesa, Arizona. Iñiguez developed his invention in Mesa, Arizona. Swarm owns the
7 Patents-in-Suit in Arizona. The only contacts with Juniper and/or Apstra in California
8 surround sending a series of letters offering a license. Thus, a “substantial part of the
9 events” for present purposes occurred in Arizona and not the Northern District of California.
10 Because a substantial part of the events occurred outside the Northern District of California,
11 venue is improper in this District and the Court should dismiss the Amended Complaint for
12 this reason also.

13 As to the last venue provision, Section 1391(b)(3) says venue is proper in “any
14 judicial district in which any defendant is subject to the court’s personal jurisdiction with
15 respect to such action.”⁵⁸ As explained above, the Court may not properly exercise personal
16 jurisdiction over Swarm and, therefore, venue is improper for this reason also.

17 This action clearly could have (and should have) been filed in the District of Arizona,
18 where Swarm is incorporated. Iñiguez and his family operate Swarm out of their home in
19 Mesa, Arizona. The only non-family “employee” of Swarm is John Fisher, who also lives
20 in Arizona. Thus, the Court should transfer the case to the District of Arizona.⁵⁹

21 **IV. CONCLUSION**

22 Plaintiffs have not established and cannot establish that Swarm initiated judicial or
23

24 ⁵⁶ *Broadway Nat'l Bank v. Plano Encryption Techs., LLC*, 173 F. Supp. 3d 469, 479 (W.D. Tex.
25 2016).

26 ⁵⁷ *Id.* at 479-80.; *see also Database Am., Inc. v. Bellsouth Advert. & Pub. Corp.*, 825 F. Supp.
27 1216, 1225 (D.N.J. 1993) (sending a cease-and-desist letter is not a substantial activity giving rise
28 to venue).

⁵⁸ 28 U.S.C. § 1391(b)(3).

⁵⁹ 28 U.S.C. § 1406(a)

